Part III

Administrative, Procedural, and Miscellaneous

26 CFR 1.168(k)-1: Additional first year depreciation deduction
(Also: §§ 38, 41, 52, 53, 168, 1502, 1563, 6211, 6401)

Rev. Proc. 2009-33

SECTION 1. PURPOSE

This revenue procedure provides guidance under § 1201(b) of the American Recovery and Reinvestment Tax Act of 2009, Div. B of Pub. L. No. 111-5, 123 Stat. 115 (February 17, 2009) (the Act). Section 1201(b) of the Act amends § 168(k)(4) of the Internal Revenue Code to allow corporations to elect not to claim the 50-percent additional first year depreciation deduction provided by § 168(k)(1) for certain property placed in service generally before January 1, 2010, and instead to increase their business credit limitation under § 38(c) and alternative minimum tax (AMT) credit limitation under § 53(c). Specifically, this revenue procedure provides guidance to corporations regarding the property eligible for this election, the time and manner for making the elections provided by new § 168(k)(4)(H), and the computation of the

amount by which the business credit limitation and AMT credit limitation may be increased if the elections provided by § 168(k)(4)(H) are or are not made.

SECTION 2. BACKGROUND

.01 Prior to amendment by the Act, § 168(k)(1) allowed a 50-percent additional first year depreciation deduction (Stimulus additional first year depreciation deduction) for certain new property acquired by a taxpayer after 2007 and placed in service before 2009 (before 2010 in the case of property described in § 168(k)(2)(B) or (C)). Section 1201(a)(1) of the Act amends § 168(k)(2) by extending the placed in service date to before 2010 (before 2011 in the case of property described in § 168(k)(2)(B) or (C)).

.02 Section 168(k)(4) allows a corporation to elect (the § 168(k)(4) election) not to claim the Stimulus additional first year depreciation deduction for eligible qualified property and instead increase its business credit limitation under § 38(c) and the AMT credit limitation under § 53(c). With the exception of revised dates, eligible qualified property for purposes of § 168(k)(4) is property eligible for the Stimulus additional first year depreciation deduction. See section 3 of Rev. Proc. 2008-65, 2008-44 I.R.B. 1082, for additional guidance on the definition of eligible qualified property for purposes of § 168(k)(4).

.03 With the extension of the Stimulus additional first year depreciation deduction by § 1201(a)(1) of the Act, § 168(k)(4) correspondingly is extended to apply to eligible qualified property that is extension property (extension property). Section 1201(b)(1)(B) of the Act amended § 168(k)(4) by adding § 168(k)(4)(H) to the Code. Section 168(k)(4)(H)(iii) defines the term “extension property” as meaning property that is

eligible qualified property solely by reason of the extension of § 168(k)(2) by the Act. This revenue procedure clarifies which eligible qualified property is extension property and which is not extension property (see section 3 of this revenue procedure).

.04 Under § 168(k)(4)(A), a § 168(k)(4) election applies to a corporation's first taxable year ending after March 31, 2008, and to any subsequent taxable year. However, under § 168(k)(4)(H)(i)(I), a corporation that made the § 168(k)(4) election for its first taxable year ending after March 31, 2008, may elect not to have the § 168(k)(4) election apply to extension property. This revenue procedure provides guidance regarding the time and manner for making the election not to apply § 168(k)(4) to extension property (see section 4 of this revenue procedure).

.05 In general, the amount by which the § 168(k)(4) election increases the business credit limitation under § 38(c) and the AMT credit limitation under § 53(c) is the bonus depreciation amount. See § 168(k)(4)(A)(iii). Except as provided below, the bonus depreciation amount generally is equal to 20 percent of the excess of the aggregate amount of depreciation that would be allowable for eligible qualified property if the Stimulus additional first year depreciation deduction applied to all such property, over the aggregate amount of depreciation that would be allowable for all such property if the Stimulus additional first year depreciation deduction did not apply. See § 168(k)(4)(C)(i). However, the bonus depreciation amount for any taxable year must not exceed the maximum increase amount reduced by the sum of the bonus depreciation amounts determined for all prior taxable years. See § 168(k)(4)(C)(ii). In general, the maximum increase amount is equal to the lesser of $30 million or 6 percent

of the sum of the unexpired and unused pre-2006 business credit carryforwards allocable to the research credit and AMT credit carryforwards to the current taxable year. See § 168(k)(4)(C)(iii). For any taxable year, the bonus depreciation amount allocated to either the business credit limitation or AMT credit limitation must not exceed the amount of unexpired and unused pre-2006 (1) business credit carryforwards allocable to the research credit or (2) AMT credit carryforwards, less bonus depreciation amounts allocated to each limitation, respectively, for all prior taxable years. See § 168(k)(4)(E)(ii). To the extent that the business credit or AMT credit allowable to a taxpayer is due to an increase in the business credit limitation or AMT credit limitation that results from the § 168(k)(4) election, such amount(s) are treated as overpayments within the meaning of § 6401(b) that are refundable to the taxpayer. See § 168(k)(4)(F). See section 5 of Rev. Proc. 2008-65 and sections 4, 5, and 6 of Rev. Proc. 2009-16, 2009-6 I.R.B. 449, for additional guidance regarding the computation of the bonus depreciation amount and the allocation of the bonus depreciation amount between the business credit and AMT credit limitations under §§ 38(c) and 53(c), respectively.

.06 Section 168(k)(4)(H)(i)(II) provides that, if a corporation has made the § 168(k)(4) election and the corporation does not make the election not to apply § 168(k)(4) to extension property, separate bonus depreciation amounts, maximum amounts, and maximum increase amounts are computed for eligible qualified property that is not extension property and for extension property. This revenue procedure provides guidance regarding the computation of the bonus depreciation amount for extension property (see section 5 of this revenue procedure).

.07 Section 168(k)(4)(H)(ii)(I) provides that, if a corporation did not make the § 168(k)(4) election for its first taxable year ending after March 31, 2008, the corporation may elect (the § 168(k)(4) extension property election) not to claim the Stimulus additional first year depreciation deduction for extension property and instead increase its business credit limitation under § 38(c) and the AMT credit limitation under § 53(c). Section 168(k)(4)(H)(ii)(II) provides that, if a corporation makes the § 168(k)(4) extension property election, such election applies only to extension property. This revenue procedure provides guidance regarding the time and manner for making the § 168(k)(4) extension property election (see section 6 of this revenue procedure).

.08 Section 3081(b) of the Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (July 30, 2008) (Housing Act), allows an applicable partnership (as defined in § 3081(b)(4)(A) of the Housing Act) to elect to be treated as having made a deemed payment of income tax in a certain amount. If an applicable partnership makes this election, the applicable partnership determines the depreciation deduction for any eligible qualified property (as defined in § 3081(b)(4)(C) of the Housing Act and in section 3 of Rev. Proc. 2008-65) placed in service by the partnership during the taxable year by using the straight line method and by not claiming the Stimulus additional first year depreciation deduction, and reduces the amount of its research credit for the taxable year by the amount of the deemed payment for the taxable year. The election to apply § 3081(b) of the Housing Act (the § 3081(b) Housing Act election) must be made for the applicable partnership's first taxable year ending after March 31, 2008, and applies to any taxable year during which eligible

qualified property is placed in service by the applicable partnership. The Act does not extend or amend the § 3081(b) Housing Act election. Therefore, if an applicable partnership made the § 3081(b) Housing Act election for its first taxable year ending after March 31, 2008, this election continues to apply only to eligible qualified property as defined in section 3 of Rev. Proc. 2008-65 (as modified by section 7.01 of this revenue procedure). An applicable partnership may not make an election to apply § 3081(b) of the Housing Act to extension property.

.09 Section 1201(a)(3)(A)(iii) of the Act amends § 168(k)(4)(D) by adding a new clause (ii) which provides that, for purposes of applying § 168(k)(2) to determine whether depreciable property is eligible qualified property for purposes of § 168(k)(4), "April 1, 2008" shall be substituted for "January 1, 2008" in § 168(k)(2)(A)(iii)(I). This amendment relates to the qualification of property acquired by a taxpayer pursuant to a written binding contract as eligible qualified property for purposes of § 168(k)(4). Section 3.02(2) of Rev. Proc. 2008-65 is modified to reflect this amendment (see section 7 of this revenue procedure).

.10 Section 168(k)(4)(E)(iv) defines the term "AMT credit increase amount" as meaning the portion of the minimum tax credit under § 53(b) for the first taxable year ending after March 31, 2008, determined by taking into account only the adjusted minimum tax for taxable years beginning before January 1, 2006. This revenue procedure modifies section 5.06 of Rev. Proc. 2008-65 to clarify that "adjusted minimum tax" means "adjusted net minimum tax" (see section 7 of this revenue procedure).

.11 Section 3.02(1)(a)(ii) of Rev. Proc. 2009-16 provides that, if a taxpayer's first

taxable year ending after March 31, 2008, ends before December 31, 2008, the taxpayer must file an amended federal income tax return on or before the due date (without regard to extensions) of the taxpayer's original federal income tax return for the succeeding taxable year in order to claim the refundable credit resulting from a § 168(k)(4) election. Some taxpayers have expressed concern about how to comply with this requirement when a taxpayer's succeeding taxable year is a short taxable year. This revenue procedure modifies section 3.02(1)(a)(ii) of Rev. Proc. 2009-16 to address this concern (see section 8 of this revenue procedure).

SECTION 3. EXTENSION PROPERTY AND ELIGIBLE QUALIFIED PROPERTY THAT IS NOT EXTENSION PROPERTY

.01 In General. Under § 168(k)(4)(H)(iii), extension property means property that is eligible qualified property solely by reason of the extension of § 168(k)(2) by the Act. Pursuant to § 168(k)(4)(D), as amended by the Act, the term "eligible qualified property" means qualified property under § 168(k)(2), except that in applying § 168(k)(2), (1) "March 31, 2008" is substituted for "December 31, 2007" each place it appears in § 168(k)(2)(A) and § 168(k)(2)(E)(i) and (ii), (2) "April 1, 2008" is substituted for "January 1, 2008" in § 168(k)(2)(A)(iii)(I), and (3) only adjusted basis attributable to manufacture, construction or production after March 31, 2008, and before January 1, 2010, is taken into account under § 168(k)(2)(B)(ii). However, the binding contract requirement in § 168(k)(2)(A)(iii)(I) does not apply for determining whether a passenger aircraft is eligible qualified property. Section 168(k)(4)(G)(iii). For the definition of eligible qualified property prior to the amendment by the Act, see section 3 of Rev. Proc. 2008-

65 (as modified by section 7.01 of this revenue procedure).

.02 Eligible Qualified Property That Is Not Extension Property. Eligible qualified property (as defined in § 168(k)(4)(D), as amended by the Act) is not extension property if:

(1) The eligible qualified property is acquired by the taxpayer after March 31, 2008, and placed in service by the taxpayer before January 1, 2009;

(2) The eligible qualified property meets the requirements of § 168(k)(2)(B) (long production period property or transportation property), is acquired by the taxpayer after March 31, 2008, and is placed in service by the taxpayer before January 1, 2010; or

(3) The eligible qualified property meets the requirements of § 168(k)(2)(C) (certain aircraft), is acquired by the taxpayer after March 31, 2008, and is placed in service by the taxpayer before January 1, 2010.

.03 Extension Property. Extension property is eligible qualified property (as defined in § 168(k)(4)(D), as amended by the Act) that:

(1) Is acquired by the taxpayer after March 31, 2008, is placed in service by the taxpayer after December 31, 2008, and before January 1, 2010, and is not described in section 3.02(2) or (3) of this revenue procedure;

(2) Meets the requirements of § 168(k)(2)(B) (long production period property or transportation property), is acquired by the taxpayer after March 31, 2008, and is placed in service by the taxpayer after December 31, 2009, and before January 1, 2011; or

(3) Meets the requirements of § 168(k)(2)(C) (certain aircraft), is acquired by the taxpayer after March 31, 2008, and is placed in service by the taxpayer after December 31, 2009, and before January 1, 2011.

SECTION 4. ELECTION NOT TO APPLY § 168(k)(4) TO EXTENSION PROPERTY

.01 In General. If a corporate taxpayer has made the § 168(k)(4) election as provided in section 3 of Rev. Proc. 2009-16 (as modified by section 8 of this revenue procedure) for its first taxable year ending after March 31, 2008, the taxpayer may make an election not to apply § 168(k)(4) to extension property placed in service by the taxpayer in its first taxable year ending after December 31, 2008, and in any subsequent taxable year. The taxpayer's § 168(k)(4) election continues to apply to eligible qualified property that is not extension property. Even if the taxpayer does not place in service any extension property in its first taxable year ending after December 31, 2008, the taxpayer must make the election not to apply § 168(k)(4) to extension property for that taxable year if the taxpayer wishes to apply such election to extension property placed in service in a subsequent taxable year. Failure to comply with all of the requirements of section 4.02 of this revenue procedure or, if applicable, section 4.03 of this revenue procedure, will nullify a taxpayer's attempted election not to apply § 168(k)(4) to extension property.

.02 Time and Manner for Making the Election Not to Apply § 168(k)(4) to Extension Property.

(1) Time for making election. Except as provided in section 4.04 of this revenue procedure, a corporate taxpayer must make the election not to apply §

168(k)(4) to extension property by the due date (including extensions) of the federal income tax return for the taxpayer's first taxable year ending after December 31, 2008. If the taxpayer has filed such federal income tax return and did not make the election not to apply § 168(k)(4) to extension property but wants to do so, see section 4.04 of this revenue procedure for how to make a late election.

(2) Manner of making election. Except as provided in section 4.03 of this revenue procedure, a corporate taxpayer makes the election not to apply § 168(k)(4) to extension property by:

(a) Attaching a statement to the taxpayer's timely-filed federal income tax return for its first taxable year ending after December 31, 2008, indicating that the taxpayer is making the election not to apply § 168(k)(4) to extension property; and

(b) Providing written notification to any partnership in which the taxpayer is a partner that the taxpayer is making the election not to apply § 168(k)(4) to extension property. This notification must be made on or before the due date (including extensions) of the taxpayer's federal income tax return for its first taxable year ending after December 31, 2008. If the taxpayer makes a late election not to apply § 168(k)(4) to extension property in accordance with section 4.04 of this revenue procedure, the notification to the partnership must be made no later than the date the taxpayer files its federal income tax return containing the late election.

.03 Controlled Groups.

(1) In general. The Act does not modify the rules under § 168(k)(4)(C)(iv) for treating members of a controlled group of corporations (as defined in § 168(k)(4)(C)(iv)

and in section 2.05 of Rev. Proc. 2009-16) as one taxpayer for purposes of § 168(k)(4) (hereinafter such group of corporations is referred to as a "controlled group"). Therefore, if any member of a controlled group makes the election not to apply § 168(k)(4) to extension property, such election is binding on all other members of the controlled group. For purposes of this section 4.03, the rules provided in section 3.05(1) of Rev. Proc. 2009-16 (relating to the determination of the members of a controlled group) and section 3.05(2)(d) of Rev. Proc. 2009-16 (relating to the effect of a § 168(k)(4) election to members entering and leaving a controlled group) apply.

(2) Time and manner of making the election not to apply § 168(k)(4) to extension property.

(a) All members of a controlled group constitute a single consolidated group. If all members of a controlled group are members of an affiliated group of corporations that file a consolidated return (hereinafter, a "consolidated group"), the common parent (within the meaning of § 1.1502-77(a)(1)(i) of the Income Tax Regulations) of the consolidated group makes the election not to apply § 168(k)(4) to extension property on behalf of all members of the consolidated group. The common parent makes this election within the time and in the manner provided in section 4.02 of this revenue procedure.

(b) All members of a controlled group do not constitute a single consolidated group. This section 4.03(2)(b) applies when separate federal income tax returns are filed by some or all members of a controlled group. If a controlled group includes, but is not limited to, members of a consolidated group, the consolidated group is treated as a

single member of the controlled group. For purposes of this section 4.03(2)(b), the election not to apply § 168(k)(4) to extension property of a consolidated group that is a member of a controlled group is made by the common parent (within the meaning of § 1.1502-77(a)(1)(i)) on behalf of the consolidated group. A member of the controlled group makes the election not to apply § 168(k)(4) to extension property by:

(i) Following the procedures in section 4.02 of this revenue procedure; and

(ii) Notifying all other members of the controlled group that the election not to apply § 168(k)(4) to extension property will be made. This notification must be made before the due date (excluding extensions) of the electing member's federal income tax return for its first taxable year ending after December 31, 2008. If the electing member makes a late election not to apply § 168(k)(4) to extension property in accordance with section 4.04 of this revenue procedure, the electing member must notify the other members no later than the date the electing member files its federal income tax return containing the late election.

.04 Limited Relief for Late Elections.

(1) Automatic 6-month extension. Pursuant to § 301.9100-2(b) of the Procedure and Administration Regulations, an automatic extension of 6 months from the due date of the federal income tax return (excluding extensions) for the taxpayer's first taxable year ending after December 31, 2008, is granted to make the election not to apply § 168(k)(4) to extension property, provided the taxpayer timely filed the taxpayer's federal income tax return for the taxpayer's first taxable year ending after December 31, 2008, and the taxpayer satisfies the requirements in § 301.9100-2(c) and (d).

(2) Other extensions. A taxpayer that fails to make the election not to apply § 168(k)(4) to extension property for the taxpayer's first taxable year ending after December 31, 2008, as provided in section 4.02, 4.03, or 4.04(1) of this revenue procedure but wants to do so must file a request for an extension of time to make the election under the rules in § 301.9100-3.

SECTION 5. BONUS DEPRECIATION AMOUNT FOR EXTENSION PROPERTY

.01 In General. Under § 168(k)(4)(H)(i)(II), if a taxpayer has made the § 168(k)(4) election for its first taxable year ending after March 31, 2008, and does not make the election not to apply § 168(k)(4) to extension property, separate bonus depreciation amounts, maximum amounts, and maximum increase amounts are computed and applied to eligible qualified property that is not extension property and to extension property. Such a taxpayer computes its bonus depreciation amount for eligible qualified property that is not extension property in the manner described in section 5 of Rev. Proc. 2008-65 (as modified by section 7.02 of this revenue procedure).

.02 Computation of Extension Property Bonus Depreciation Amount.

(1) In general. Except as provided in section 5.02(2) of this revenue procedure, a taxpayer described in section 5.01 of this revenue procedure computes its bonus depreciation amount for extension property (extension property bonus depreciation amount) in the manner described in section 5 of Rev. Proc. 2008-65 (as modified by section 7.02 of this revenue procedure), with the following additional modifications:

(a) Bonus depreciation amount. The bonus depreciation amount under § 168(k)(4)(C)(i) is computed only with regard to extension property; and

(b) Maximum amount. The maximum amount under § 168(k)(4)(C)(ii) equals the maximum increase amount (as computed under section 5.04 of Rev. Proc. 2008-65) less the sum of the extension property bonus depreciation amounts determined under § 168(k)(4)(C) for all preceding years. Therefore, a taxpayer described in section 5.01 of this revenue procedure may claim a maximum of $30 million of refundable credits relating to its § 168(k)(4) election applicable to eligible qualified property that is not extension property, and a maximum of $30 million of refundable credits relating to its § 168(k)(4) election applicable to extension property.

(2) Controlled groups. If a taxpayer described in section 5.01 of this revenue procedure is a member of a controlled group (as determined under section 3.05(1) of Rev. Proc. 2009-16), the taxpayer must compute the controlled group's bonus depreciation amount for extension property (group extension property bonus depreciation amount). The group extension property bonus depreciation amount is computed in the same manner as described in section 4.02(2) or 4.02(3)(b)(ii) of Rev. Proc. 2009-16, as applicable, but taking into account the modifications described in section 5.02(1) of this revenue procedure.

.03 Allocation of Extension Property Bonus Depreciation Amount.

(1) In general. A taxpayer described in section 5.01 of this revenue procedure allocates its extension property bonus deprecation amount (computed under section 5.02 of this revenue procedure) between the business credit limitation under § 38(c) and the AMT credit limitation under § 53(c) in the same manner as provided in section 4 of Rev. Proc. 2009-16. Therefore, an allocation under this section 5.03 is reported with

the taxpayer's timely filed original federal income tax return for the taxable year.

(2) Controlled groups. The group extension property bonus depreciation amount (computed under section 5.02(2) of this revenue procedure) that is allocable to a member of a controlled group (as determined under section 3.05(1) of Rev. Proc. 2009-16) is determined by arriving at each member's proportionate share of the group extension property bonus depreciation amount, unless all members of the group agree to an alternative allocation under section 4.02(3)(c) of Rev. Proc. 2009-16. Each member's proportionate share of the group extension property bonus depreciation amount is determined in accordance with the method described in section 4.02(2) or 4.02(3)(b)(iii) of Rev. Proc. 2009-16, as applicable. In lieu of the method described in section 4.02(3)(b) of Rev. Proc. 2009-16, the controlled group may allocate the group extension property bonus depreciation amount pursuant to an allocation agreement (which may differ from the allocation agreement applicable to eligible qualified property that is not extension property) described in section 4.02(3)(c) of Rev. Proc. 2009-16.

.04 Examples.

(1) Example 1. On August 1, 2008, B, a corporation with a taxable year ending on December 31st, purchases and places in service property described in both § 168(k)(2)(A) and (k)(4)(D) (Property X). In addition, on September 1, 2008, B begins production of property described in both § 168(k)(2)(B)(i) and (k)(4)(D) (Property Y). On March 15, 2009, B files its original federal income tax return for the taxable year ending December 31, 2008, and makes the § 168(k)(4) election in accordance with section 3.04 of Rev. Proc. 2009-16.

On August 1, 2009, B purchases and places in service property described in both § 168(k)(2)(A) and (k)(4)(D) (Property Z). On October 1, 2009, B completes production of Property Y and places Property Y in service. On March 15, 2010, B files its original federal income tax return for the taxable year ending December 31, 2009, and does not make the election not to apply § 168(k)(4) to extension property.

(a) For B's taxable year ending December 31, 2008, Property X is eligible qualified property under § 168(k)(4)(D) and (k)(2)(A) and, as a result of B's § 168(k)(4) election, is taken into account in computing the bonus depreciation amount for this taxable year.

(b) For B's taxable year ending December 31, 2009, Property Y is eligible qualified property that is not extension property under § 168(k)(4)(D), (k)(4)(H), and (k)(2)(B) and, as a result of B's § 168(k)(4) election, is taken into account in computing the bonus depreciation amount for this taxable year. Further, under § 168(k)(4)(H)(iii), Property Z is extension property that is taken into account in computing the separate extension property bonus depreciation amount for this taxable year.

(2) Example 2. The facts are the same as in Example 1. Assume that (1) Property X costs $50 million and is 5-year property under § 168(e), (2) the progress expenditures (within the meaning of section 5.02(5) of Rev. Proc. 2008-65 (as modified by section 7.02 of this revenue procedure)) as of October 1, 2009, with respect to Property Y are $100 million and that Property Y is 5-year property under § 168(e), and (3) Property Z costs $50 million and is 5-year property under § 168(e). Further assume that B depreciates its 5-year property using the optional depreciation table that

corresponds to the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. For each of Property X and Property Z, the difference between the aggregate amount of depreciation that would be allowable for the property if the Stimulus additional first year depreciation deduction applied over the aggregate amount of depreciation that would be allowable for the property if the Stimulus additional first year depreciation deduction did not apply is $20 million. That amount for Property Y is $40 million. As of December 31, 2008, B has $300 million of unexpired and unused pre-2006 research and AMT credit carryforwards.

(a) Under section 5 of Rev. Proc. 2008-65 (as modified by section 7.02 of this revenue procedure), B's bonus depreciation amount for its taxable year ending December 31, 2008, is 20 percent of $20 million, or $4 million (Property X). Because $4 million is less than (i) $30 million and (ii) 6 percent of B's unexpired and unused pre-2006 research and AMT credit carryforwards (.06 X $300 million, or $18 million), B is not limited by the maximum increase amount. Therefore, B claims $4 million of refundable credits for its taxable year ending December 31, 2008.

(b) Under section 5 of Rev. Proc. 2008-65 (as modified by section 7.02 of this revenue procedure), B's bonus depreciation amount for its taxable year ending December 31, 2009, is 20 percent of $40 million, or $8 million (Property Y). Under section 5.04 of Rev. Proc. 2008-65, B's maximum increase amount is $18 million (the lesser of (i) $30 million and (ii) 6 percent of B's unexpired and unused pre-2006 research and AMT credit carryforwards (.06 X $300 million, or $18 million)). Under

section 5.03 of Rev. Proc. 2008-65, B's maximum amount is $14 million ($18 million less the $4 million of bonus depreciation amounts determined for eligible qualified property that is not extension property for B's taxable year ending December 31, 2008). Therefore, because $8 million is less than $14 million, B may claim $8 million of refundable credits attributable to eligible qualified property that is not extension property for its taxable year ending December 31, 2009.

(c) Under section 5.02(1)(a) of this revenue procedure, B's extension property bonus depreciation amount is 20 percent of $20 million, or $4 million (Property Z). Under section 5.04 of Rev. Proc. 2008-65, B's maximum increase amount is $18 million (the lesser of (i) $30 million and (ii) 6 percent of B's unexpired and unused pre-2006 research and AMT credit carryforwards (.06 X $300 million, or $18 million)). Under section 5.02(1)(b) of this revenue procedure, B's maximum amount is $18 million. Therefore, because $4 million is less than $18 million, B may claim $4 million of refundable credits attributable to extension property for its taxable year ending December 31, 2009.

SECTION 6. § 168(k)(4) EXTENSION PROPERTY ELECTION

.01 In General. If a corporate taxpayer did not make the § 168(k)(4) election for its first taxable year ending after March 31, 2008, the taxpayer may make the § 168(k)(4) extension property election. If the § 168(k)(4) extension property election is made, the election applies to all extension property placed in service by the taxpayer in the taxpayer's first taxable year ending after December 31, 2008, and in any subsequent taxable year. Even if the taxpayer does not place in service any extension

property in its first taxable year ending after December 31, 2008, the taxpayer must make the § 168(k)(4) extension property election for that taxable year if the taxpayer wishes to apply the election to extension property placed in service in a subsequent taxable year. Sections 6.02, 6.03, and 6.04 of this revenue procedure provide the time and manner for making the § 168(k)(4) extension property election. Failure to comply with all of the requirements of section 6.02, 6.03, or 6.04 of this revenue procedure, as applicable, will nullify a taxpayer's attempted § 168(k)(4) extension property election. Section 6.05 of this revenue procedure provides the effects of making the § 168(k)(4) extension property election and section 6.06 of this revenue procedure provides the procedures for making a late § 168(k)(4) extension property election.

.02 Time and Manner for Making the § 168(k)(4) Extension Property Election.

(1) Time for making election. Except as provided in section 6.06 of this revenue procedure, a corporate taxpayer must make the § 168(k)(4) extension property election by the due date (including extensions) of the federal income tax return for the taxpayer's first taxable year ending after December 31, 2008. If the taxpayer has filed such federal income tax return and did not make the § 168(k)(4) extension property election but wants to do so, see section 6.06 of this revenue procedure for how to make a late election.

(2) Manner of making election. Except as provided in sections 6.03 and 6.04 of this revenue procedure:

(a) C corporations. A C corporation makes the § 168(k)(4) extension property election by:

(i) Claiming the refundable credit on the appropriate line of the Form 1120, U.S. Corporation Income Tax Return, for the taxpayer's first taxable year ending after December 31, 2008 (for example, Line 32g of the 2008 Form 1120);

(ii) Filing, with the Form 1120, the Form 3800, General Business Credit, or Form 8827, Credit for Prior Year Minimum Tax—Corporations, or both, as applicable, for the taxpayer's first taxable year ending after December 31, 2008;

(iii) Filing, with the Form 1120, the Form 4562, Depreciation and Amortization (Including Information on Listed Property), for the taxpayer's first taxable year ending after December 31, 2008, indicating that the taxpayer used the straight line method and did not claim the Stimulus additional first year depreciation deduction for all extension property; and

(iv) Providing written notification to any partnership in which the taxpayer is a partner that the taxpayer is making the § 168(k)(4) extension property election. This notification must be made on or before the due date (including extensions) of the taxpayer's federal income tax return for its first taxable year ending after December 31, 2008. If the taxpayer makes a late § 168(k)(4) extension property election in accordance with section 6.06 of this revenue procedure, the notification to the partnership must be made no later than the date the taxpayer files its federal income tax return containing the late election.

(b) S corporations. An S corporation makes the § 168(k)(4) extension property election by:

(i) Making appropriate adjustments to the appropriate line of the Form

1120S, U.S. Income Tax Return for an S Corporation, for the taxpayer's first taxable year ending after December 31, 2008, to reflect the results described in section 6.05(3) of this revenue procedure from making the § 168(k)(4) extension property election (for example, Line 22b of the 2008 Form 1120S);

(ii) Attaching to the Form 1120S for the taxpayer's first taxable year ending after December 31, 2008, a statement indicating that the taxpayer is making the § 168(k)(4) extension property election and a statement showing the computation of the increases to the business credit and AMT credit limitations under, respectively, §§ 38(c) and 53(c) resulting from making the § 168(k)(4) extension property election;

(iii) Filing, with the Form 1120S, the Form 4562 for the taxpayer's first taxable year ending after December 31, 2008, indicating that the taxpayer used the straight line method and did not claim the Stimulus additional first year depreciation deduction for all extension property; and

(iv) Providing written notification to any partnership in which the taxpayer is a partner that the taxpayer is making the § 168(k)(4) extension property election. This notification must be made on or before the due date (including extensions) of the taxpayer's federal income tax return for its first taxable year ending after December 31, 2008. If the taxpayer makes a late § 168(k)(4) extension property election in accordance with section 6.06 of this revenue procedure, the notification to the partnership must be made no later than the date the taxpayer files its federal income tax return containing the late election.

.03 No Extension Property Placed In Service During First Taxable Year Ending

After December 31, 2008. If a corporate taxpayer did not make the § 168(k)(4) election for its first taxable year ending after March 31, 2008, and the taxpayer does not place in service any extension property during the taxpayer's first taxable year ending after December 31, 2008, the taxpayer makes the § 168(k)(4) extension property election by attaching a statement to its timely-filed original federal income tax return for its first taxable year ending after December 31, 2008, indicating that the taxpayer is making the § 168(k)(4) extension property election and by following the procedures in section 6.02(2)(a)(iv) of this revenue procedure.

.04 Controlled Groups.

(1) Determination of Controlled Group Members. This section 6.04(1) provides rules for the determination of membership in a controlled group (as defined in section 2.05 of Rev. Proc. 2009-16) for purposes of the § 168(k)(4) extension property election.

(a) First taxable year ending after December 31, 2008. For the first taxable year ending after December 31, 2008, § 168(k)(4)(C)(iv) is applied to determine the members of a controlled group (as defined in section 2.05 of Rev. Proc. 2009-16) on December 31, 2009, and all such members on that date are treated as a controlled group and as one taxpayer. However, if the first taxable year ending after December 31, 2008, ends on the same date for all members of a controlled group (as defined in section 2.05 of Rev. Proc. 2009-16), all members on such ending date are treated as a controlled group and as one taxpayer for purposes of applying § 168(k)(4) and this revenue procedure for the first taxable year ending after December 31, 2008.

(b) Subsequent taxable years. For any taxable year subsequent to a

taxpayer's first taxable year ending after December 31, 2008, § 168(k)(4)(C)(iv) is applied to determine the members of a controlled group (as defined in section 2.05 of Rev. Proc. 2009-16) on December 31. However, if a taxable year subsequent to the first taxable year ending after December 31, 2008, ends on the same date for all members of a controlled group (as defined in section 2.05 of Rev. Proc. 2009-16), all members on such ending date are treated as a controlled group and as one taxpayer for purposes of applying § 168(k)(4) and this revenue procedure for that subsequent taxable year.

(2) Time and manner of making the § 168(k)(4) extension property election.

(a) In general. If any member of a controlled group (as determined under section 6.04(1)(a) of this revenue procedure) makes the § 168(k)(4) extension property election, such election is binding on all other members of the controlled group for the members' first taxable year ending after December 31, 2008. If in a subsequent taxable year, a controlled group determined under section 6.04(1)(b) of this revenue procedure (the second controlled group) includes 2 or more members of a controlled group determined under 6.04(1)(a) of this revenue procedure (the first controlled group), all members of the second controlled group that were members of the first controlled group are deemed to have made (or not made, as the case may be) the § 168(k)(4) extension property election of the first controlled group. For purposes of this section 6.04, the rules provided in section 3.05(2)(d) of Rev. Proc. 2009-16 (relating to the effect of a § 168(k)(4) election to members entering and leaving a controlled group) apply. Accordingly, whether members of the second controlled group that were not members

of the first controlled group are bound by a § 168(k)(4) extension property election made by the first controlled group (or bound by the first controlled group's lack of a § 168(k)(4) extension property election) is determined under the rules of section 3.05(2)(d) of Rev. Proc. 2009-16.

(b) All members of a controlled group constitute a single consolidated group. If all members of a controlled group are members of a consolidated group, the common parent (within the meaning of § 1.1502-77(a)(1)(i)) of the consolidated group makes the § 168(k)(4) extension property election on behalf of all members of the consolidated group. The common parent makes this election within the time and in the manner provided in section 6.02 or 6.03 of this revenue procedure, as applicable.

(c) All members of a controlled group do not constitute a single consolidated group. This section 6.04(2)(c) applies when separate federal income tax returns are filed by some or all members of a controlled group. If a controlled group includes, but is not limited to, members of a consolidated group, the consolidated group is treated as a single member of the controlled group. For purposes of this section 6.04(2)(c), the § 168(k)(4) extension property election of a consolidated group that is a member of a controlled group is made by the common parent (within the meaning of § 1.1502-77(a)(1)(i)) on behalf of the consolidated group. A member of a controlled group makes the § 168(k)(4) extension property election by:

(i) Following the procedures in section 6.02 or 6.03 of this revenue procedure, as applicable;

(ii) Attaching to the member's federal income tax return a statement

describing the computation of the group extension property bonus depreciation amount (as provided in section 6.05(2) of this revenue procedure);

(iii) Attaching to the member's federal income tax return Schedule O (Form 1120) and indicating in column (f) of Part IV that the controlled group has made the § 168(k)(4) extension property election and the portion of the group extension property bonus depreciation amount allocated to the member (as provided in section 5.03(2) of this revenue procedure); and

(iv) Notifying all other members of the controlled group that the § 168(k)(4) extension property election will be made. This notification must be made before the due date (excluding extensions) of the electing member's federal income tax return for the first taxable year ending after December 31, 2008.

.05 Effects of Making § 168(k)(4) Extension Property Election.

(1) In general. If a taxpayer makes the § 168(k)(4) extension property election, the taxpayer's extension property bonus depreciation amount is computed in the manner described in section 5.02 of this revenue procedure, and the taxpayer's allocation of the extension property bonus depreciation amount between the business credit limitation and AMT credit limitation under §§ 38(c) and 53(c), respectively, is made in the manner described in section 5.03 of this revenue procedure. If the taxpayer makes a late § 168(k)(4) extension property election in accordance with section 6.06 of this revenue procedure, the allocation under section 5.03 of this revenue procedure is reported with the taxpayer's federal income tax return containing the late election.

(2) Controlled groups. If a member of a controlled group (as determined under section 6.04(1) of this revenue procedure) makes the § 168(k)(4) extension property election, the group extension property bonus depreciation amount is computed in the manner described in section 5.02(2) of this revenue procedure and each member's proportionate share of the group extension property bonus depreciation amount is determined in the manner described in section 5.03(2) of this revenue procedure.

(3) S corporations. An S corporation is allowed to make the § 168(k)(4) extension property election in the time and manner described in section 6.02 or 6.03 of this revenue procedure, as applicable. The effects of the § 168(k)(4) extension property election on an electing S corporation and its shareholders are the same as those described in section 6.01 and section 6.02 of Rev. Proc. 2009-16 (relating to the effects of the § 168(k)(4) election on an electing S corporation and its shareholders).

(4) Partnerships with corporate partners that make the § 168(k)(4) extension property election. If a corporation makes the § 168(k)(4) extension property election and is a partner in a partnership (electing corporate partner), the partnership must provide the electing corporate partner with sufficient information to apply § 168(k)(4)(G)(ii) in determining its distributive share of partnership items under § 702 relating to any extension property placed in service by the partnership during the taxable year. This information must be provided in the time and manner required under § 6031(b) and § 1.6031(b)-1T(a)(3)(ii) and (b). If the partnership has filed its federal tax return for its first taxable year ending after December 31, 2008, on or before July 20, 2009, and did not provide the electing corporate partner with sufficient information to

apply § 168(k)(4)(G)(ii) with respect to extension property, the partnership must provide such information to the electing corporate partner by the later of October 19, 2009, or 90 calendar days after receiving the corporate partner's notification as required by section 6.02 of this revenue procedure. The determination of the electing corporate partner's distributive share of items relating to extension property is made in the manner described in section 5.01(2) of Rev. Proc. 2009-16.

.06 Limited Relief for Late § 168(k)(4) Extension Property Election.

(1) Automatic 6-Month Extension. Pursuant to § 301.9100-2(b), an automatic extension of 6 months from the due date of the federal income tax return (excluding extensions) for the taxpayer's first taxable year ending after December 31, 2008, is granted to make the § 168(k)(4) extension property election, provided the taxpayer timely filed the taxpayer's federal income tax return for the taxpayer's first taxable year ending after December 31, 2008, and the taxpayer satisfies the requirements in § 301.9100-2(c) and (d).

(2) Other Extensions. A taxpayer that fails to make the § 168(k)(4) extension property election for the taxpayer's first taxable year ending after December 31, 2008, as provided in section 6.02, 6.03, 6.04, or 6.06(1) of this revenue procedure but wants to do so must file a request for an extension of time to make the election under the rules in § 301.9100-3.

SECTION 7. MODIFICATION OF REV. PROC. 2008-65

To reflect the statutory changes made to § 168(k)(4)(D) by §§ 1201(a)(3) and 1201(b)(1)(A) of the Act and to clarify the definition of AMT credit increase amount in §

168(k)(4)(E)(iv):

.01 Section 3.02(2) of Rev. Proc. 2008-65 is modified to read as follows:

(2) The property (a) is acquired by the taxpayer after March 31, 2008, and before January 1, 2009, but only if no written binding contract for the acquisition was in effect before April 1, 2008, or (b) is acquired by the taxpayer pursuant to a written binding contract which was entered into after March 31, 2008, and before January 1, 2009. Section 168(k)(4)(D)(ii) and (k)(2)(A)(iii). However, see section 3.03 of this revenue procedure for an exception to this rule;

.02 Section 5.02(5) of Rev. Proc. 2008-65 is modified to read as follows:

(5) With respect to long production period property, only the adjusted basis of such property attributable to manufacture, construction, or production after March 31, 2008, and before January 1, 2010, is taken into account in determining the aggregate depreciation amounts under sections 5.01(1) and (2) of this revenue procedure. Section 168(k)(4)(D)(iii). The amounts of adjusted basis of the property attributable to manufacture, construction, or production after March 31, 2008, and before January 1, 2010, are referred to as “progress expenditures.” For purposes of determining progress expenditures under this section 5.02(5), rules similar to the rules in section 4.02(1)(b) of Notice 2007-36, 2007-17 I.R.B. 1000, 1001 (relating to progress expenditures for GO Zone extension real property), apply.

.03 Section 5.06 of Rev. Proc. 2008-65 is modified to read as follows:

.06 AMT Credit Increase Amount. The AMT credit increase amount means the portion of the minimum tax credit under § 53(b) for the first taxable year ending after

March 31, 2008, determined by taking into account only the adjusted net minimum tax for taxable years beginning before January 1, 2006. See § 168(k)(4)(E)(iv). For purposes of this section 5.06, minimum tax credits shall be treated as allowed on a first-in, first-out basis. Section 168(k)(4)(E)(iv).

SECTION 8. MODIFICATION OF REV. PROC. 2009-16

To address how a taxpayer whose first taxable year ending after March 31, 2008, ends before December 31, 2008, makes a § 168(k)(4) election when the taxpayer's succeeding taxable year is a short taxable year:

.01 Section 3.02(1)(a)(ii) of Rev. Proc. 2009-16 is modified to read as follows:

(ii) Except as provided in section 3.03(3) of this revenue procedure, by filing an amended federal income tax return for such taxable year in the manner described in section 3.02(2) of this revenue procedure on or before the due date (without regard to extensions) of the taxpayer's federal income tax return for the succeeding taxable year; and

.02 Section 3.03 of Rev. Proc. 2009-16 is modified by adding paragraph (3) to read as follows:

(3) If, under section 3.02(1)(a)(ii) of this revenue procedure, a taxpayer is required to file an amended federal income tax return for its first taxable year ending after March 31, 2008, and the taxpayer's succeeding taxable year is a short period (within the meaning of § 443(a)), then the taxpayer files the amended federal income tax return for its first taxable year ending after March 31, 2008, in the manner described in section 3.02(2) of this revenue procedure on or before the earlier of:

(a) 30 calendar days after the due date (with regard to extensions) of the taxpayer's federal income tax return for its first taxable year ending after March 31, 2008; or

(b) 180 calendar days after the due date (without regard to extensions) of the taxpayer's federal income tax return for the succeeding taxable year.

SECTION 9. EFFECT ON OTHER DOCUMENTS

.01 Sections 3.02(2), 5.02(5), and 5.06 of Rev. Proc. 2008-65 are modified and, as modified, are superseded.

.02 Section 3.02(1)(a)(ii) of Rev. Proc. 2009-16 is modified and, as modified, is superseded.

.03 Section 3.03 of Rev. Proc. 2009-16 is modified as provided in section 8.02 of this revenue procedure.

SECTION 10. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2133. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 4, 5, and 6. This information is necessary and will be used to determine whether the taxpayer is eligible to make the election not to apply § 168(k)(4) to extension property and the

§ 168(k)(4) extension property election, and the amount by which the § 168(k)(4) extension property election increases the taxpayer's applicable credit limitations. The collections of information are required for the taxpayer to make the election not to apply § 168(k)(4) to extension property and the § 168(k)(4) extension property election. The likely respondents are the following: business and other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 2,700 hours.

The estimated annual burden per respondent/recordkeeper varies from 0.25 hours to 1 hour, depending on individual circumstances, with an estimated average of 0.5 hours. The estimated number of respondents is 5,400. The estimated annual frequency of responses is on occasion.

SECTION 11. EFFECTIVE DATE

This revenue procedure is effective June 30, 2009.

SECTION 12. DRAFTING INFORMATION

The principal author of this revenue procedure is Jeffrey T. Rodrick of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure contact Mr. Rodrick at (202) 622-4930 (not a toll free call).